# DR. AMBEDKAR: THE PRINCIPAL ARCHITECT OF THE CONSTITUTION OF INDIA

## Clause wise Discussion on the Draft Constitution

**30th July 1949 to 16th September 1949**

**SECTION SIX**

**Clausewise Discussion**

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**Articles for Discussion:**



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**NEW ARTICLE 112-B**

**The Honorable Dr. B. R. Ambedkar**: (Bombay : General) : Mr. President, Sir, I move:

" That after article 112-A, the following new article be inserted :—

*Jurisdiction and powers of His Majesty in Council under existing law in certain cases to be exercisable by the Supreme Court.*

' 112-B. Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to matters other than those referred to in the foregoing provisions of this Chapter in relation to which jurisdiction and powers were exercisable by His Majesty in Council immediately before the commencement of this Constitution under any existing law '."

Sir, the position is this that according to the ruling of the Privy Council there is a distinction between civil matters and mattes relating to Income-tax and, for instance, acquisition proceedings. It has been held that the proceedings relating to Income tax and to acquisition of property do not lie within the purview

of what are called ' civil proceedings.' And it might therefore be held that unless a special provision was made the powers of the Supreme Court were confined to civil proceedings. In order to remove that doubt this article 112-B is now proposed to be introduced so as to give the Supreme Court full powers over all proceedings, including civil proceedings and other proceedings which are not of a civil nature. That is the reason why this article is sought to be introduced.

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**Mr. President:** Dr. Ambedkar, would you like to say anything?

**The Honorable Dr. B. R. Ambedkar**: Sir, with regard to the amendment of my Friend, Pandit Thakur Das Bhargava, I do not think that that amendment is necessary if he is really enlarging the jurisdiction of the Court. The word " practice " is generally taken to cover matters of procedure, and article 112-B which I have proposed does not deal with procedure but deals with substantive matter of jurisdiction. Therefore his amendment " or practice " is unnecessary.

With regard to the amendment of my Friend Prof. Shibban Lal Saksena, there are two points to which I would like to reply. The first is this, that if there is to be an appeal to the Supreme Court in matters of sentence of death passed by Courts-martial, then such a provision could be easily made by the Indian Army Act giving the accused person the right to appeal, and it has been provided, if I may draw my friend's attention to clause *(1)* of article 114, that the Supreme Court shall have such further jurisdiction and power with respect to any matters in the Union List. It reads :—

" *114(1)* The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer."

If Parliament thinks that such a power should be vested in the Supreme Court, there is no impediment in the way of Parliament making an appropriate provision in the Army Act conferring such a power on them. Again, I should like to draw attention to article 112 which deals with matters of special need. Under that it would be open to the Supreme Court to entertain an appeal against a Court-martial because therein the words used are—

" any cause or matter made by any court or tribunal,"

and therefore, the wording being so large, no Court or tribunal could escape from the special jurisdiction of the Supreme Court provided under article 112. Therefore, my submission is that his amendment is also quite unnecessary.

With regard to the amendment of my friend Mr. Naziruddin Ahmad to omit the words " existing law "...

**Mr. Naziruddin Ahmad** : **I** have not moved that.

**Mr. President: He** has not moved it, he has left it to the Drafting Committee.

**The Honorable Dr. B. R. Ambedkar**: If he has left it to the Drafting

Committee I am very glad. Sir. We shall certainly pay the best attention that his point deserves.

**Mr. President:** Then I will put the amendments.

**Prof. Shibban Lal Saksena** : **In** view of the assurances given, I would like to withdraw my amendments.

**Pandit Thakur Das Bhargava**: **I** too am withdrawing my amendment, Sir.

The amendments were, by leave of the Assembly, withdrawn.

(Article 112B was added to the Constitution.)

## NEW ARTICLE 15A

**Mr. President:** Then we go back to New Article 15A.

**The Honorable Dr. B. R. Ambedkar:** Sir, I move :

"That after article 15, the following article be inserted:—

' 15A. *(1)* No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Protection against certain arrests and detentions

*(3)* Nothing in this article shall apply—

*(a)* to any person who for the time being is an enemy alien; or

*(b)* to any person who is arrested under any law providing for preventive detention:

Provided that nothing in sub-clause *(b)* of clause *(3) of* this article shall permit the detention of a person for a longer period than three months unless—

*(a)* an Advisory Board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention, or

*(b)* such person is detained in accordance with the provisions of any law made by Parliament under clause *(4)* of this article.

*(4)* Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained '."

Sir, the House will recall that when at a previous session of this Assembly we

were discussing article 15, there was a great deal of controversy on the issue as to whether the words should be " except according to procedure established by law ", or whether the words " due process " should be there in place of the words which now find a place in article 15. It was ultimately accepted that instead of the words " due process ", the words should be " according to procedure established by law ". I know that a large part of the House including myself were greatly dissatisfied with the wording of article 15. It will also be recalled that there is no part of our Draft Constitution which has been so violently criticised by the Public outside as article 15 because all that article 15 does is this, it only prevents the executive from making an arrest. All that is necessary is to have a law and the law need not be subject to any conditions or limitations. In other words, it was felt that while this matter was being included in the Chapter dealing with Fundamental Rights, we were giving a *carte blanche* to Parliament to make and provide for the arrest of any person under any circumstances as Parliament may think fit. We are therefore now, by introducing article 15A, making, if I may say so, compensation for what was done then in passing article 15. In other words, we are providing for the substance of the law of " due process " by the introduction of article 15A.

Article 15A merely lifts from the provisions of the Criminal Procedure Code two of the most fundamental principles which every civilised country follows as principles of international justice. It is quite true that these two provisions contained in clause *(1)* and clause (2) are already to be found in the Criminal Procedure Code and therefore probably it might be said that we are really not making any very fundamental change. But we are, as I contend, making a fundamental change because what we are doing by the introduction of article 15A is to put a limitation upon the authority both of Parliament as well as of the Provincial Legislature not to abrogate these two provision's, because they are now introduced in our Constitution itself.

It is quite true that the enthusiasts for personal liberty are probably not content with the provision's of clauses *(1)* and *(2).* They probably want something more by way of further safeguards against the inroads of the executive and the legislature upon the personal liberty of the citizen. I personally think that while I sympathise with them that probably this article might have been expanded to include some further safeguards, I am quite satisfied that the provisions contained are sufficient against illegal or arbitrary arrests.

As Members will see, the provisions contained in clauses *(1)* and (2) of article 15A are made subject to certain limitations which are set out in clause *(3)* which says that the provisions contained in clauses *(1)* and (2) of article 15A will not apply to any person who for the time being is an enemy alien. I do not think that

there could be any further objection to the reservation made in clauses *(3)(ii)* in respect of an enemy alien.

With regard to sub-clause *(b)* of clause *(3)* I think it has to be recognised that in the present circumstances of the country, it may be necessary for the executive to detain a person who is tampering either with public order as mentioned in the Concurrent List or with the Defence Services of the country. In such a case I do not think that the exigency of the liberty of the individual should be placed above the interest of the State. It is on that basis that sub-clause *(b)* has been included within the provisions of clause *(3).*

There again, those who believe in the absolute personal liberty of the individual will recognise that this power of preventive detention has been helged in by two limitations : one is that the Government shall have power to detain a person in custody under the provisions of clause *(3)* only for three months. If they want to detain him beyond three months they must be in possession of a report made by an advisory board which will examine the papers submitted by the executive and will probably also give an opportunity to the accused to represent his case and come to the conclusion that the detention is justifiable. It is only under that that the executive will be able to detain him for more than three months. Secondly, detention may be extended beyond three months if Parliament makes a general law laying down in what class of cases the detention may exceed three months and state the period of such detention.

I think, on the whole, those who are fighting for the protection of individual freedom ought to congratulate themselves that it has been found possible to introduce this clause which, although it may not safisfy those who hold absolute views in this matter, certainly saves a great deal which had been lost by the non-introduction of the words ' due process of law '. Sir, I commend this article to the House.

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**Pandit Thakur Das Bhargava** :.. .The House has just heard the speech of the Honorable Mover of the main motion. I need not recall to the memory of the House the heated controversy which raged about a year and a quarter ago round the words ' due process of law *'.* Now a substantive part of the ' due process ' has practically been given up after 70 per cent, being secured in article 13. I should think that in the circumstances of our country, this provision of ' due process ' is certainly necessary cent per cent. It is the only right process in this country....

**The Honorable Dr. B. R. Ambedkar:** Sir, may I say a word? I am prepared to accept one of the amendments of my Honorable Friend which says that the accused shall have the right to be defended. I can add these words in the last

line of clause *(1)* of article 15A. It will run thus : ' be denied the right to consult or to be defended by lawyers of his choice.' I think that will carry out my Honorable Friends intention.

**Pandit Thakur Das Bhargava:** In trials as well as in criminal proceedings?

**The Honorable Dr. B. R.** Ambedkar: 'Defended' means that. Could we not curtail the debate now?

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**Shri H. V. Kamath :** ...In order to obviate or at least mitigate the evils or the harm that might accrue from unjust arrest of people by the police or other authorities I wish to provide through this amendment specifically that the parson arrested shall be informed of the grounds of his arrest within seven days following his arrest. The words used in this article moved by Dr. Ambedkar are " as soon as may be ". I would be happy if the person is informed of the grounds even at the time of his arrest.

**The Honorable Dr. B. R. Ambedkar:** That is the intention. You are worsening the position by your amendment.

**Shri H. V. Kamath :** Why not then make it specific? I would welcome the substitution of the words " as soon as may be "by the word " immediately ". My Friend Shrimati Pumima Banerjee, has also moved an amendment to the same article, where she wishes to substitute the words " as soon as may be " by " not less than fifteen days ". I think fifteen days is far too long a period. I think twenty-four hours would be the best. In any case if there is any hitch in informing the arrestee of the grounds of his arrest, I think in no case should it exceed more than a week.

Coming, Sir, to the next amendment (No. 108), I beg to move:

" That in amendment No. I of List I (Eighth Week), in clause *(2)* of the proposed new article I5A, after the word ' magistrate ', occuring at the end, the words ' who shall afford such person an opportunity of being heard ' be added."

**The Honorable Dr. B. R. Ambedkar:** I must tell my Honorable Friend Mr. Kamath that he is worsening the position. Our intention is that the words " as soon as possible " really mean immediately after arrest, if not before arrest. Clause (2) says that every parson who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest. No magistrate can exercise his authority in permitting longer detention unless he knows the charges on which a man has been detained.

**Shri H. V. Kamath :** I know a little of the Criminal Procedure. I have known of cases where magistrates have remanded persons for fifteen days at a stretch without the police filling a *chalan* or charge sheet before him. I know of magistrates who have remanded parsons without caring to go into the *prima fade* merits of the case. Another thing that Dr. Ambedkar said was that the

words " as soon as may be " really means " immediately ".

**The Honorable Dr. B. R. Ambedkar:** It means in any case within twenty-four hours.

**Shri H. V. Kamath**: May I invite his attention to certain articles where the words " as soon as may be " have been used without any specific connotation. Take for instance article 280 which relates to the Emergency Powers of the President.

**The Honorable Dr. B. R. Ambedkar**: The interpretation of the meaning of the words " as soon as may be " must differ with the context.

**Shri H. V. Kamath :** I do not know whether Dr. Ambedkar will be always in India to interpret and argue with doubting layers and doubting judges as to the meaning of the words and phrases used in this Constitution. I am sorry Dr. Ambedkar will not be immortal to guide our judges and lawyers in this country. As the Constitution is being framed not for Dr. Ambedkar's life time, but for generations to come, I think we must be specific in what we say.

**The Honorable Dr. B. R. Ambedkar:** You are selling your immortality very cheap.

**Shri H. V. Kamath**: I have no desire for physical immortality. It appears however that Dr. Ambedkar presumes he will be immortal.

**The Honorable Dr. B. R. Ambedkar:** You might admit you have made a mistake in tabling this amendment.

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**Shri H. V. Kamath** : .. .Dr. Ambedkar in his speech referred to the enthusiastic champions of absolute liberty. I shall make it quite clear that I am not an advocate of *absolute* liberty.

**Mr. President:** He did not talk of absolute liberty today.

**Shri H. V. Kamath** : He did. Sir, if I remember aright. (The Honorable Dr. Ambedkar noded in the affirmative). He referred to absolute personal liberty. I am not a champion or advocate of absolute personal liberty....

## ARTICLE 15A

**Shri Mahavir Tyagi** (United Provinces : General) : Sir, Dr. Ambedkar will please pardon me when I express my fond wish that he and the other members of the Drafting Committee had had the experience of detention in jails before they became members of the Drafting Committee.

**The Honorable Dr. B. R. Ambedkar**: **I** shall try hereafter to acquire that experience.

**Shri Mahavir Tyagi** : I may assure Dr. Ambedkar that, although the British Government did not give him this privilege, the Constitution he is making with

this own hands will give him that privilege in his life-time. There will come a day when they will be detained under the provisions of the very same clauses which they are making *(Interruption).*

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**Smt. G. Durgabai** : .. .Sir, I commend this article for the acceptance of the House.

**Mr. President**: I understand Dr. Ambedkar has to make certain suggestions to meet the criticisms that have been made against this article. I would therefore give him a chance to speak at this stage and if any further question arises we can consider it.

**Babu Ramnarayan Singh** (Bihar : General) : Does he agree to remove the article altogether?

**Mr. President:** No.

**The Honorable Dr. B. R. Ambedkar:** Sir, I relly did not think that so much of the time of the House would be taken up in the discussion of this article 15-A. As I said, I myself and a large majority of the Drafting Committee as well as members of the public feel that in view of the language of article 15, *viz.,* that arrest may be made in accordance with a procedure laid down by the law, we had not given sufficient attention to the safety and security of individual freedom. Ever since that article was adopted I and my friends had been trying in some way to restore the content of due procedure in its fundamentals without using the words " due process ". I should have thought that Members who are interested in the liberty of the individual would be more than satisfied for being able to have the prospect before them of the provisions contained in article 15-A and that they would have accepted this with good grace. But I am sorry that is not the spirit which actuates those who have taken part in this debate and put themselves in the position of not merely critics but adversaries of this article. In fact their extreme love of liberty has gone to such a length that they even told me that it would be much better to withdraw this article itself.

Now, Sir, I am not prepared to accept that advice because I have not the least doubt in my mind that that is not the way of wisdom and therefore I will stick to article 15-A. I quite appreciate that there are certain points which have been made by the various critics which require sympathetic consideration, and I am prepared to bestow such consideration upon the points that have been raised and to suggest to the House certain amendments which I think will remove the criticism which has been made that certain fundamentals have been omitted from the draft article 15-A. In replying to the criticism I propose to separate the general part of the article from the special part which deals with preventive detention; I will take preventive detention separately.

Now turning to clause *(1)* of article 15-A, I think there' were three suggestions

made. One is with regard to the words " as soon as may be ". There are amendments suggested by Members that these words should be deleted, and in place of those words " fifteen days " and in some places " seven days " are suggested. In my judgement, these amendments show a complete misunderstanding of what the words " as soon as may be " mean in the context in which they are used. These words are integrally connected with clause (2) and they cannot, in my judgement, be read otherwise than by reference to the provisions contained in clause (2), which definitely say that no man arrested shall be detained in custody for more than 24 hours unless at the end of the 24 hours the police officer who arrests and detains him obtains an authority from the magistrate. That is how the section has to be read. Now it is obvious that if the police officer is required to obtain a judicial authority from a magistrate for the continued arrest of a person after 24 hours, it goes without saying that he shall have at least to inform the magistrate of the charge under which that man has been arrested, which means that " as soon as " cannot extend beyond 24 hours. Therefore all those amendments which suggest fifteen days or seven days are amendments which really curtail the liberty of the individual. Therefore I think those amendments are entirely misplaced and are not wanted.

The second point raised is that while we have given in clause *(1)* of article 15-A a right to an accused person to consult a legal practitioner of his choice, we have made no provision for permitting him to conduct his defence by a legal practitioner. In other words, a distinction is made between the right to consult and *the* right to be defended. Personally I thought that the words " to consult " included also the right to be defended because consultation would be utterly purposeless if it was not for the purpose of defence. However, in order to remove any ambiguity or any argument that may be raised that consultation is used in a limited sense, I am prepared to add after the words " to consult " the words " and be defended by a legal practitioner ", so that there would be both the right to consult and also the right to be defended. A question has been raised by the last speaker as to the meaning of the words " legal practitioner of his choice ". No doubt the words " of his choice " are important and they have been deliberately used, because we do not want the Government of the day to foist upon an accused person a counsel whom the Government may think fit to appear in his case because the accused person may not have confidence in him. Therefore we have used the words " of his choice ". But the words " of his choice " are qualified by the words " legal practitioner". By the phrase "legal practitioner" is meant what we usually understand, namely, a practitioner who by the rules of the High Court or of the Court concerned, is entitled to practise.

Now, Sir, I come to clause *(2). The* principal point is that raised by my Friend Mr. Pataskar. So far as I was able to understand, he wanted to replace the

word " Magistrate " by the words " First class Magistrate ". Well, I find some difficulty in accepting the words suggested by him for two reasons. We have in clause *(2)* used very important word's, namely, " the nearest Magistrate " and I thought that was very necessary because otherwise it would enable a police officer to keep a man in custody for a longer period on the ground that a particular Magistrate to whome he wanted to take the accused, or the Magistrate who would be ultimately entitled to try the accused, was living at a distance far away and therefore he had a justifiable ground for detaining him for the longer period. In order to take away any such argument, we had used the words " the nearest Magistrate ". Now supposing, we were to add the words " the nearest First Class Magistrate": the position would be very difficult. There may be " the nearest Magistrate " who should be approached by the police in the interests of the accused himself in order that his case may be judicially considered. But he may not be a First Class Magistrate. Therefore, we have really to take a choice; whether we shall give the accused the earliest opportunity to have his matter decided and looked into by the Magistrate near-about, or whether we should go in search of a First Class Magistrate. I think " the nearest Magistrate " is the best provision in the interests of the liberty of the accused. I might also point out to my Friend, Mr. Pataskar, that even if I were to accept his amendment—" the nearest First Class Magistrate"—it would be perfectly possible for the Government of the day to amend the Criminal Procedure Code to confer the powers of a First Class Magistrate on any Magistrate whom they want and thereby cheat the accused. I do not think therefore that his amendment is either desirable or necessary and I cannot accept it.

Now, those are the general provisions as contained in article *\5(a),* and I am sure...

**Pandit Thakur Das Bhargava :** Kindly consider...

**The Honorable Dr. B. R. Ambedkar:** Now, my Friend, Pandit Thakur Das Bhargava has raised the question of the right of crossexamination.

**Pandit Thakur Das Bhargava :** And for reasons recorded.

**The Honorable Dr. B. R. Ambedkar:** Well, that I think is a salutary provision, because I think that the provision which occurs in several provisions of the Criminal Procedure Code making it obligatory upon the Magistrate to record his reasons in writing enables the High Court to consider whether the discretion left in the Magistrate has been judicially exercised. I quite agree that that is a very salutary provision, but I really want my friend to consider whether in a matter of this kind, where what is involved is remand to custody for a further period, the' Magistrate will not have the authority to consider whether the charge framed against the accused by the police is *prima facie* borne out.

**Pandit Thakur Das Bhargava** : At present also under section 167(3) these words are there. It is today incumbent upon every Magistrate to whom a person is taken to record the reasons if he allows the detention to continue.

**The Honorable Dr. B. R. Ambedkar:** That is quite true. They are there. But are they very necessary ?

**Pandit Thakur Das Bhargava** : Absolutely necessary!

**The Honorable Dr. B. R. Ambedkar:** Personally, I do not think they are necessary. Let us take the worst case. A Magistrate, in order to please the police, so to say, got into the habit of granting constant remands, one after the other, thereby enabling the police to keep the accused in custody. Is it the case that there is no remedy open to the accused ? I think the accused has the remedy to go to High Court for revision and say that the procedure of the Court is being abused.

**Pandit Thakur Das Bhargava**: How can a poor person go to the High Court?

**The Honorable Dr. B. R. Ambedkar:** I do not want to close my mind on it. If there is the necessity I think the Drafting Committee may be left to consider this matter at a later stage, whether the introduction of these words are necessary. As at present advised, we think those words are not necessary.

Now I come to the second part of article 15(3) dealing with preventive detention. My Friend, Mr. Tyagi, has been quite enraged against this part of the article. Well, I think I can forgive my Friend, Mr. Tyagi, on that ground because after all, he is not a lawyer and he does not really know what is happening. He suddenly wakes up, when something which is intelligible to a common mind, crops up without realizing that what crops up and what makes him awake is really merely consequential. But I cannot forgive the layer members of the House for the attitude that they have taken.

What is it that we are doing ? Let me explain to the House what we are doing now. We had before us the three Lists contained in the Seventh Schedule. In the three Lists there were included two entries dealing with preventive detention, one in List I and another in List III. Supposing now, this part of the article dealing with preventive detention was dropped. What would be the effect of it ? The effect of it would be that the Provincial Legislatures as well as the Central Legislature would be at complete liberty to make any kind of law with preventive detention, because if this Constitution does not by a specific article put a limitation upon the exercise of making any law which we have now given both to the Center and to the Provinces, there would be no liberty left, and Parliament and the Legislatures of the States would be at complete liberty to make any kind of law dealing with preventive detention. Do the lawyer Members of the House want that sort of liberty to be given to the Legislatures of the States and Parliament ? My submission is that if their attitude was as

expressed today, that we ought to have no such provision, then what they ought to have done was to have objected to those entries in List I and List III. We are trying to rescue the thing. We have given power to the Legislatures ofthe State and Parliament to make laws regarding preventive detention. What I am trying to do is to curtail that power and put a limitation upon it. I am not doing worse. You have done worse.

Coming to the specific provision contained in the second part, I will first...

**Pandit Thakur Das Bhargava** : Who made those Lists ?

**The Honorable Dr. B. R. Ambedkar:** I made them : you passed them! I had these limitations in mind. Now I come to the proviso to clause 3(b)

**Shri Mahavir Tyagi** : Will you help laymen to understand as to why you have not provided for the revision by the Advisory Board of the cases under clause *(4) ?*

**The Honorable Dr. B. R. Ambedkar: I** cannot explain to him the legal points in this House. This House is not a law class and I cannot indulge in that kind of explanation now. The Honorable Member is my friend; if he does not understand he can come and ask me afterwards.

Now I will deal with the proviso which is subject to two sorts of criticisms. One criticism is this : that in the case of persons who are being arrested and detained under the ordinary law as distinct from the law dealing with preventive detention, we have made provision in clause *(1)* of article 15A that the accused person shall be informed of the grounds of his arrest. I said we do not make any such provision in the case of a person who is detained under preventive detention. I think that is a legitimate criticism. I am prepared to redress the position, because I find that, even under the existing laws made by the various provincial governments relating to preventive detention, they have made provision for the information of the accused regarding the grounds on which he has been detained. I personally do not see any reason why when provinces who are anxious to have preventive detention laws have this provision, the Constitution should not embody it. Therefore I am prepared to incorporate the following clause after clause *(3)* in article 15A:

" *(3a)* Where an order is made in respect of any person under sub-clause *(b)* of clause *(3)* of this article, the authority making an order shall...."

**Babu Ramnarayan Singh** : Sir, Dr. Ambedkar says that provinces want the inclusion of this clause...

**Mr. President:** He has not said anything of that sort. What he has said is that several of the Acts which have been passed by the provinces for preventive detention contain certain provisions. He wants to incorporate a similar provision in this article.

**Babu Ramnarayan Singh** : **I** wanted to know whether we are passing

legislation at the dictates of the provinces.

**Mr. President:** Nothing of the sort.

**The Honorable Dr. B. R. Ambedkar:** I find that Mr.Ramnarayan Singh is somewhat disaffected with the provincial government to which he belongs.

As I was saying, I think this provision ought to do :

After clause *(3)* of article 15A the following clause be inserted :

" *(3a)* Where an order is made in respect of any person under sub-clause *(b)* of clause *(3)* of this article the authority making an order shall as soon as may be communicate to him the grounds on which the order has been passed and afford him the earliest opportunity of making a representation against the order.

(b) Nothing in clause *(3a)* of this article, shall require the authority making any order under sub-clause *(b)* of clause *(3)* of this article to disclose the facts which that authority considers to be against the public interest to disclose."

These are the exact words in some of the Acts of the provinces and I do not see any reason why they should not be introduced here, so that this ground of criticism that we are detaining a person merely because his case comes under preventive detention, without even informing him of the ground's on which we detain him. Now that is met by the amendment which I have proposed.

The other question is...

**The Honorable Shri K. Santhanam** (Madras : General): Is it in addition to the provision in clause *(1)* ? There is already a provision that no person shall be detained in custody without being informed.

**The Honorable Dr. B. R. Ambedkar:** It does not deal with persons arrested for preventive detention.

**The Honorable Shri K. Santhanam** : Does it not include a person who is arrested for preventive purposes ? I thought clause (1) includes every kind of detention.

**The Honorable Dr. B. R. Ambedkar:** No. That is not our understanding anyhow. The cases are divided into two categories.

**Shri Mahavir Tyagi** : He is a lawyer.

**The Honorable Dr. B. R. Ambedkar:** That is in a court of law, not here.

**Mr. President:** He is not a lawyer.

**The Honorable Dr. B. R. Ambedkar**: I think it would be much better to say : Nothing in clauses *(1)* and (2) shall apply to clause *(3).* That is the intention. So I have met that part of their criticism.

Now I come to the question of three months' detention without enquiry or trial. Some Members have said that it should not be more than 15 days and others have suggested some other period and so on. I would like to tell the House why exactly we thought that three months was a tolerable period and 15 months too long. It was represented to us that the cases of detunes may be considerable.

We do not know how the situation in this country will develop, what would be the circumstances which would face the country when the Constitution comes into operation, whether the people and parties in this country would behave in a constitutional manner in the matter of getting hold of power, or whether they would resort to unconstitutional methods for carrying out their purposes. If all of us follow purely constitutional methods to achieve our objective, I think the situation would have been different and probably the necessity of having preventive detention might not be there at all.

But I think in making a law we ought to take into consideration the worst and not the best. Therefore if we follow upon that position, namely, that there may be many parties and people who may not be patient enough, if I may say so, to follow constitutional methods but are impatient in reaching their objective and for that purpose resort to unconstitutional methods, then there may be a large number of people who may have to be detained by the executive. Supposing there is a large number of people to be detained because of their illegal or unlawful activities and we want to give effect to the provisions contained in sub-clause *(a)* of that proviso, what would be the situation ? Would it be possible for the executive to prepare the causes, say against one hundred people who may have been detained in custody, prepare the brief, collect all the information and submit the cases to the Advisory Board ? Is that apractical possibility ? Is it a practical possibility for the Advisory Board to dispose of so many cases within three months, because I will say that the provisions contained in sub-clause *(a)* of the proviso are peremptory in that if they want to detain a person beyond three month's they must obtain an order from the Advisory Board to that effect.

Therefore, having regard to the administrative difficulties in this matter, the Drafting Committee felt that the exigencies of the situation would be met by putting a time limit of three months. There is no other intention on the part of the Drafting Committee in prescribing this particular time limit and I hope having regard to the facts to which I have referred the House will agree that this is as good and as reasonable a provision that could be made.

Now, I come to the Advisory Board. Two points have been raised. One is what is the procedure of the Advisory Board. Sub-clause *(a)* does not make any specific reference to the procedure to be followed by the Advisory Board. Pointed questions have been asked whether under subclause *(a) the* executive would be required to place before the Advisory Board all the papers connected with the case which have led them to detain the man under preventive custody.

The pointed question has been asked whether the accused person would be entitled to appear before the Board, cross-examine the witnesses, and make his own statement. It is quite true that this sub-clause *(a)* is silent as to the procedure to be followed in an enquiry which is to be conducted by the

Advisory Board. Supposing this sub-clause *(a)* is not improved and remains as it is, what would be the consequences ? As I read it, the obtaining of the report in support of the order is an obligatory provision. It would be illegal on the part of the executive to detain a man beyond three months unless they have on the day on which the three months period expires in their possession a recommendation of the Advisory Board. Therefore, if the executive Government were not to place before the Advisory Board the papers on which they rely, they stand to lose considerably, that is to say, they will forfeit their authority to detain a man beyond three months.

Therefore, in their own interest it would be desirable. I think necessary, for the executive Government to place before the Advisory Board the documents on which they rely. If they do not, they will be taking a very grave risk in the matter of administration of the preventive law. That in itself, in my judgement, is enough of a protection that the executive will place before it.

If my friends are not satisfied with that, I have another proposal and that is that, without making any specific provisions with regard to procedure to be followed in sub-clause *(a)* itself, to add at the end of subclause *(4)* the following words :—" and Parliament may also prescribe the procedure to be followed by an Advisory Board in an enquiry under clause *(a)* of the proviso to clause *(3)* of this article," I am prepared to give the power to Parliament to make provision with regard to the procedure that may be followed by the Advisory Board. I think that ought to meet the exigencies of the situation.

Sir, these are all the amendments I am prepared to make in response to the criticisms that have been levelled against the different parts of the article 15A.

I will now proceed to discuss some miscellaneous suggestions.

**Shri Jaspat Roy Kapoor** : In that case, probably sub-section *(b)* of the proviso to clause (2) will go ? .

**The Honorable Dr. B. R. Ambedkar:** Nothing will go.

**Dr. Bakhshi Tek Chand** (East Punjab : General) : You have agreed that the grounds of the detention will be communicated to the person affected and his explanation taken.

**The Honorable Dr. B. R. Ambedkar:** And he will also be given an opportunity to put in a written statement.

**Dr. Bakhshi Tek Chand :** Will you agree also to the other point to which I drew attention, namely, that as in the Madras Act, the explanation will be placed before the Board ?

**The Honorable Dr. B. R. Ambedkar:** All papers may be placed before him. That is what I say.

**Dr. Bakhshi Tek Chand** : All papers may not be placed before him. I have some experience. They will say that this is a very small matter. If you give him

an opportunity to submit an explanation within a specified time, why do you fight shy of incorporating this provision ? In sub-clause (2) of sub-section *(1)* of section 3 of the Madras Act there is provision that the explanation will be placed before the Board.

**The Honorable Dr. B. R. Ambedkar:** That, I consider, is implicit in what I said.

**Dr. Bakhshi Tek Chand** : Why not make it clear ? It is not there in the Bombay Act or in the United Provinces Act.

**The Honorable Dr. B. R. Ambedkar:** As I stated, in the requirement regarding the submission of papers to the Advisory Board under sub-clause *(a)* is implicit the submission of a statment by the accused. If that is not so, I am now making a further provision that Parliament may by law prescribe the procedure, in which case Parliament may categorically say that these papers shall be submitted to the Advisory Board. Now I am not prepared to make any further concession at all.

**Shri Mahavir Tyagi** : Dr. Ambedkar will please give me one minute ?

**The Honorable Dr. B. R. Ambedkar:** Not now.

**Shri Mahavir Tyagi**: I want to know whether the detenus under clause *(4),* according to the law made by Parliament or by the provinces, will have the benefit of their case being reviewed by the tribunal ?

Sir, I want to know whether the detenus who will be detained under the Act which Parliament will enact under clause *(4)* will have the privilege of their case being reviewed by the tribunal proposed ?

**The Honorable Dr. B. R. Ambedkar:** My Friend Mr. Tyagi is acting as though he is overwhelmed by the fear that he himself is going to be a detenu. I do not see any prospect of that.

**Shri Mahavir Tyagi : I** am trying to safeguard your position.

**The Honorable Dr. B. R. Ambedkar:** I will now deal with certain miscellaneous suggestions made.

**Pandit Thakur Das Bhargava** : What about the safeguards regarding cross-examination and defence ?

**The Honorable Dr. B. R. Ambedkar:** The right of cross-examination is already there in the Criminal Procedure Code and in the Evidence Act. Unless a provincial Government goes absolutely stark mad and takers away these provisions it is unnecessary to make any provision of that sort. Defending includes cross-examination.

**Pandit Thakur Das Bhargava** : They even try to usurp power to this extent.

**The Honorable Dr. B. R. Ambedkar**: If you can give a single instance in India where the right of cross-examination has been taken away, I can understand it. I have not seen any such case.

Sir, the question of the maximum sentence has been raised. Those who want that a maximum sentence may be fixed will please note the provisions of clause *(4)* where it has been definitely stated that in making such a law. Parliament will also fix the maximum period.

**Pandit Hirday Nath Kunzru** : The word is ' may *'.*

**The Honorable Dr. B. R. Ambedkar:** ' May ' is ' shall '.

**Pandit Hirday Nath Kunzru** : Parliament may or may not do that.

**The Honorable Dr. B. R. Ambedkar:** That is true, but if it does, it will fix the maximum.

Another question raised is as regards the maintenance of the detenus and their families.

**Shri Jaspat Roy Kapoor** : What about periodical reviews ?

**The Honorable Dr. B. R. Ambedkar**: **I** am coming to that. That is not a matter which we can introduce in the Constitution itself. For instance, it may be necessary in some cases and may not be necessary in other cases. Besides, clause *(4)* gives power to Parliament also to provide that maintenance shall be given.

Personally, myself, I think the argument in favour of maintenance is very weak. If a man is really digging into the foundations of the Stale and if he is arrested for that, he may have the right to be fed when he is in prison; but he has very little right to ask for maintenance. However, *ex-gratin.* Parliament and the Legislature may make provision. I think such a provision is possible under any Act that Parliament may make under clause *(4).*

With regard to the review of the cases of detenus, there again, I do not see why it should not be possible for either the provincial Governments in their own law to make provision for periodical review or for Parliament in enacting a law under clause *(4)* to provide for periodical review. I think this is a purely administrative matter and can be regulated by law.

My Friend Mr. Ananthasayanam Ayyangar, said that I really do not have much feeling for the detenus, because I was never in jail, but I can tell him that if anybody in the last Cabinet was responsible for the introduction of a rule regarding review, it was myself. A very large part of the Cabinet was opposed to it. I and one other European member of the Cabinet fought for it and got it. So, it is not necessary to go to jail to feel for freedom and liberty.

Then there is another point which was raised by my Friend, Mr. Kamath. He asked me whether it was possible for the High Courts to issue writs for the benefit of the accused, in cases of preventive detention. Obviously the position is this. A writ of *habeas corpus* can be asked for and issued in any case, but the other writs depend upon the circumstances of each different man, because the object of the writ of *haheas corpus* is a very limited one. It is limited to

finding out by the Court whether the man has been arrested under law, or whether he has been arrested merely by executive whim. Once the High Court is satisfied that the man is arrested under some law, *habeas corpus* must come to an end. If he has not been arrested, under any law, obviously the party affected may ask for any other writ which may be necessary and appropriate for redressing the wrong. That is my reply to Mr. Kamath.

Sir, I hope that with the amendments I have suggested the House will be in a position to accept the article 15 A.

**Mr. President:** I will now put the amendments to the vote.

**The Honorable Dr. B. R. Ambedkar**: They might all be withdrawn.

**Mr. Naziruddin Ahmad** (West Bengal : Muslim) : New clauses have just been added. Will they be put to the vote now ?

**Mr. President:** Yes, just now ?

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**Mr. President:** The question is :

" That in amendment No. I above, in clause *(1)* of the proposed new article 15A, for the words ' a legal practitioner of his choice ' the words ' and be defended by a legal practitioner of his choice in all criminal proceedings and trials ' be substituted."

(The amendment was negatived.)

**Mr. President:** Then No. 7.

**Shri T. T. Krishnamachari** : Dr. Ambedkar has accepted a portion of this amendment. It need not be voted upon. If it is rejected, then Dr. Ambedkar will not be able to accept a portion of it.

**The Honorable Dr. B. R. Ambedkar:** Mine are independent amendments.

**Mr. President:** ...I think these are all the amendments which we moved yesterday. Dr. Ambedkar has moved certain amendments today and I would put them to vote now.

***[Six amendments were rejected.]***

***[Following amendments were adopted.]***

" That in clause *(1) of* article I5A, after the word ' consult ' the words ' and be defended by ' be inserted."

"That in clause *(3)* of article *I5A.* for the words "Nothing in this article ' the words, brackets and figures ' Nothing in clauses *(1)* and *(2) of* the article ' be substituted."

" That after clause *(3)* of article I5A, the following clauses be inserted —

' *(3a)* Where an order is made in respect of any person under sub-clause *(b) of* clause *(3) of* this article the authority making an order shall as soon as may be communicated to him the grounds on which the order has been made and afford him the earliest opportunity of making a representation against the order.

*(3b)* Nothing in clause *(3a)* of this article shall require the authority making any order under

sub-clause *(b)* of clause *(3) of* this article to disclose the facts which such authority considers to be against the public interest to disclose.' "

" That at the end of clause *94)* of article I5A, the following be added :—

' and Parliament may also prescribed by law the procedure to be followed by an Advisory Board in an enquiry under clause *(a)* of the proviso to clause *(3)* of this article.' "

Article 15 A, as amended, was added to the Constitution.

**Mr. President:** I am sorry I forgot to put Dr. Bakhshi Tek Chand's amendment to vote. Of course it was not necessary. It is covered by Dr. Ambedkar's amendments.

## ARTICLE 209A

**The Honorable Dr. B. R. Ambedkar:** Sir, I move: " That after article 209, between Chapters VII and IX of Part VI the following be inserted:—

## " CHAPTER VIII
### SUBORDINATE COURTS

*Appointment of District Judges*

209A. (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

*(2)* A person not already in the service of the Union or of the State shall only be eligible to be appointed as district judge if he has been for not less than seven years as advocate or a pleader and is recommended by the High Court for appointment.

*Recruitment of other than district Judges to the Judicial service*

209B. Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor in accordance with rules made by him in this behalf after consultation with the State Public Service Commission and with the High Court.

*Control over subordinate courts*

209C. The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court but nothing in this article shall be construed as taking away from any such person, the right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

209D. *(1)* In this chapter— (Interpretation)

*(a)* the expression " district judge " includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

*(b)* the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts interior to the post of district judge.

*Application of the provisions of this Chapter to certain classes of Magistrates*

209F. The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made there under shall with effect from such date as may be fixed by him in this behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.' "

Sir, the object of these provisions is two-fold; first of all, to make provision for the appointment of district judges and subordinate judges and their qualifications. The second object is to place the whole of the civil judiciary under the control of the High Court. The only thing which has been excepted from the general provisions contained in article 209A, 209B and 209C is with regard to the magistracy, which is dealt with in article 209E. The Drafting Committee would have been very happy if it was in a position to recommend to the House that immediately on the commencement of the Constitution, provision's with regard to the appointment and control of the Civil Judiciary by the High Court were also made applicable to the magistracy. But it has been realised, and it must be realised that the magistracy is intimately connected with the general system of administration. We hope that the proposals which are now being entertained by some of the provinces to separate the judiciary from the Execution will be accepted by the other provinces so that the provisions of article 209E would be made applicable to the magistrates in the same way as we propose to make them applicable to the civil judiciary. But some time must be permitted to elapse for the effectuation of the proposals for the separation of the judiciary and the execution. It has been felt that the best thing is to leave this matter to the Governor to do by public notification as soon as the appropriate changes for the separation of the judiciary and the executive are carried through in any of the province. This is all I think I need say. There is nothing revolutionary in this. Even in the Act of 1935, appointment and control of the civil judiciary was vested in the High Court. We are marely continuing the

same in the present draft.

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**Shri R. K. Sidhva** (C. P. & Berar: General): Sir, could you kindly call me again ? I had been out on some office business when my name was called; but I have to move an amendment which is important.

**The Honorable Dr. B. R. Ambedkar**: Absence cannot be an execuse.

**Mr. President**: I am afraid it is too late now.

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**The Honorable Dr. B. R. Ambedkar**: With regard to the observations of the last speaker, I should like to say that this chapter will be part of the Provincial Constitution, and we will try to weave this language into that part relating to States in Part III by special adaptation at a later stage.

There are two amendments—one by Mr. Chaliha and the other by Pandit Kunzru—which call for some explanation.

With regard to the amendment moved by Mr. Chaliha, I am sorry to say I cannot accept it, for two reasons: one is that we do not want to introduce any kind of provincialism by law as he wishes to do by his amendment. Secondly, the adoption of his amendment might create difficulties for the province itself because it may not be possible to find a pleader who might technically have the qualifications but in substance may not be fitted to be appointed to the High Court, and I think it is much better to leave the ground perfectly open to the authority to make such appointment provided the incumbent has the qualification. I therefore cannot accept that amendment.

The amendment of my Friend, Pandit Kunzru, raises in my judgement a very small point and that point is this: whether the posting and promotion of the District Judges should be with the Governor, that is to say, the government of the day, or should be transferred to 209C to the High Court? Now the provision as contained in the Government of India Act, 1935 was this that the appointment, posting and promotion of the District Judge was entirely in the hands of the Governor. The High Court had no place in the appointment, posting and promotion of the District Judge. My Friend Mr. Kunzru, will see that we have considerably modified that provision of the Government of India Act, because we have added the condition namely, that in the matter of posting, appointment and promotion of the District Judges, the High Courts shall be consulted. Therefore the only point of difference is this: whether the High Court should have exclusive jurisdiction which we propose to give in the matter of posting, promotion and leave etc. of the Subordinate Judicial Service other than the District Judge, or, whether the High Court should have jurisdiction in these

matters over all subordinate Judges including the District Judge. It seems to me that the compromise we have made is eminently suitable. The only difference ultimately will be that in the case of Subordinate Judges any notification with regard to posting, promotion and grant of leave will issue from the High Court, while in the case of the District Judge any such notification will be issued from the Secretariat. Fundamentally and substantially, there is no difference at all. The District Judge will have the protection of the High Court because the consultation is made obligatory and I think that ought to satisfy the exigencies of the situation.

**ARTICLE 215**

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**The Honorable Dr. B. R. Ambedkar:** I have nothing to say. Sir. Sardar Hukam Singh : Sir, I have no amendment to move. I have one objection to clause *(2)* of this article, to which I want to draw the attention of the President of the Drafting Committee. The phraseology looks to me as derogatory to the sovereignty of the Parliament and I would request him, if possible to change the words :

.. I only want to bring this to the notice of the Chairman of the Drafting Committee.

**Mr. President:** Sardar Hukam Singh has made certain suggestions with regard to paragraph 2. He says that it is derogatory to the authority of Parliament to say that the President will repeal or amend any law made by Parliament and that the words should be so modified as to indicate that the power of Parliament is not in any way subordinated.

**The Honorable Dr. B. R. Ambedkar**: That is so. It is a kind of adaptation. In regard to the autonomous districts of Assam the Governor of Assam has similar power to adapt the laws made by Parliament when he thinks fit so to do. The whole law made by Parliament cannot be applied to certain peculiarly constituted territories unless they are adapted.

**Sardar Hukam Singh** : Is that a sufficient answer. Sir ? My suggestion was that it is derogatory to the sovereignty of Parliament to say that the President would repeal an Act passed by Parliament

**Mr. President**: The suggestion is about a word and not about the power ?

**The Honorable Dr. B. R. Ambedkar**: The President is part of Parliament. There is no difficulty at all.

**Mr. President:** I will now put the amendment of Shri Brajeshwar Prasad to vote.

***[Amendment was negatived. Article 215 was added to the constitution.]***

## ARTICLE 303

**Mr. President**: Article 303. We can now take up the definition article 303.

**The Honorable Dr. B. R. Ambedkar:** Mr. President, I move :

" That sub-clause *(c) of* clause *(1)* of article 303 be omitted."

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The motion was adopted.

**The Honorable Dr. B. R. Ambedkar:** As regards *(b),* I would just like to make one point. We are proposing to drop from the Constitution two Parts which we had originally proposed in which certain communities had been enumerated as Scheduled Castes and certain communities as Scheduled Tribes. We thought that was cumbering the Constitution too much and that this could be left to be done by the President by order. That is our present proposal. It seems to me that, in that event, it will be necessary to transfer the definition clauses of the Scheduled Castes and the Scheduled Tribes to some other part of the Constitution and make provision for them in a specific article itself, saying that the President shall define who are the Scheduled Castes and who are the Scheduled Tribes. Now it seems to me that the question has been raised with regard to article 296 and 299 which have been held over. It may be that the definition of ' Anglo-indian ' and ' Indian Christian ' which is referred to in *(b)* and *(c)* may have to be reconsidered along with that proposition. I request you to hold them over for the present.

**Shri V. I. Muniswami Pillai** (Madras : General) : The whole thing regarding the Scheduled Castes, etc. may be held over.

**Mr. President**: I take it that the House agrees to hold over the consideration of items *(b)* and *(c).*

[Sub-clauses *(b)* and *(c)* were held over.]

**Mr. President:** There are no amendments to item *(d).*

The question is:

" That sub-clause *(d)* be adopted."

The motion was adopted.

**The Honorable Dr. B. R. Ambedkar:** Sir, I move :

" That sub-clause *(e)* of clause *(1)* of article 303 be deleted."

**Mr. President:** There is no Chief Judge now. There used to be subordinate High Courts which were called Chief Courts and they used to have Chief Judges.

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The amendment was adopted.

Sub-clause *(e)* of clause *(1)* was deleted from article 303.

(Amendment No. 3219 was not moved.)

**Mr. President:** Then *(f).* There is no amendment to this.

The question is:

" That sub-clause *(f) of* clause *(1)* stand part of article 303."

The motion was adopted.

**The Honorable Dr. B. R. Ambedkar:** Sir, I move :

" That for sub-clauses *(g) of* clause (7) of article 303 the following sub-clause be substituted, namely:—

' *(g)* ' corresponding Province ', ' corresponding Indian State ' or ' corresponding State ' means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, as the case may be, for the particular purpose in question;' "

We have only included Indian States.

**Shri H. V. Kamath:** Are we still going to retain the distinction between ' State ' and ' Indian State '?

**The Honorable Dr. B. R. Ambedkar:** The distinction in this : A State now means a constituent part of the Union. An Indian State means a State which is outside the Union hut under the paramountey or control of the Union.

**Shri R. K. Sidhva** : Is the Cutch State which is now administered by the Center an ' Indian State '? So also Bhopal?

**The Honorable Dr. B. R. Ambedkar:** An Indian State is defined at a later stage.

**Mr. President:** There is a definition of an Indian State given later on in amendment No. 140.

**Shri T. T. Krishnamachari** : There seems *to* he some confusion in the minds of Members. The terms " corresponding province " and " corresponding Indian State " these are terms pertaining to the period before the commencement of the Constitution. The term " corresponding Slate " comes into existence after the commencement of the Constitution. The difference between the two is only this. I hope there will now be no confusion on this matter.

***[Amendment of Dr. Ambedkar was adopted. Sub-clause (g), of clause (1), as amended was added to article 303.]***

**Mr. President:** Then *(h).* There is no amendment to this.

***[Sub-clause (h) of clause (1) was added to article 303.]***

**The Honorable Dr. B. R. Ambedkar:** Sir, I move :

" That in sub-clause *(i)* of clause *(1)* of article 303, the words ' but does not include any Act of Parliament of the United Kingdom or any Order in Council made under any such Act ' be omitted."

Such Acts as the Merchant Shipping Act might have to be retained until Parliament otherwise provides.

**Shri H. V. Kamath** : With regard to this *(i),* there is evidently a slight lacuna. It speaks of laws and bye-laws. But only ' rule ' is mentioned. Why not ' bye-rule ' as well ?

**The Honorable Shri K. Santhanam :** I have got an amendment to this...

**The Honorable Dr. B. R. Ambedkar:** Whether a law is in force or not would depend upon various considerations. First of all, the merger itself may have provided that certain laws shall not be in operation. It may be that the Bombay Government after that territory has been merged, may retain the laws for that particular territory known as Baroda, or its own legislation might abrogate it. Therefore any existing law means the law that is in force at the date of commencement of the Constitution.

**The Honorable Shri K. Santhanam: I** do not press my amendment.

***[Above amendment of Dr. Ambedkar was adopted. Sub-clause (i) of clause (1), as amended, was added to article 303.]***

**Mr. President:** Then *(j).* There is no amendment to this. The question ist:

" That sub-clause (/') of clause *(1).* stand part of article 303."

(The motion was adopted)

**Honorable Dr. B. R. Ambedkar:** Sir, I move :

" That after sub-clause (j) of clause *(1)* of article 303, the following sub-clause be inserted:—

' *(jj)* ' foreign State ' means any State other than India but does not include a State notified in this behalf by the President.' "

**The Honorable Shri K. Santhanam** : Would Dr. Ambedkar kindly explain what is meant by the latter portion of this sub-clause *(jj)?* Will he give an illustration of that '?

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**The Honorable Dr. B. R. Ambedkar:** Sir, the position is this : If one were to stop with the word " India ", it means what a Foreign State ordinarily means. Every State is foreign to another State. That is quite clear from the first part of the definition. Therefore, there can be no quarrel with that part of the definition. In fact that definition may not be necessary even, but in view of the fact that we have used the words " Foreign State " in some part of our Constitution and in view of the fact that it may be necessary for certain purposes to declare that a Foreign State, although it is a Foreign State in the terminological sense of the word, is not a Foreign State for certain purposes, it is necessary to have this definition and to give the power to the President to declare that for certain purposes a State of that kind will not be a Foreign State. The case of Malaya, I

understand, is very much in point. Therefore, it really means that for certain purposes the President may declare that although a State is a Foreign State in the sense that it is outside India, for certain purposes will not be treated as a Foreign State. It is for that purpose that this definition is sought to be introduced.

**The Honorable Shri K. Santhanam:** This sub-clause does not authorize the President to notify for certain purposes. It gives a definition.

**The Honorable Dr. B. R. Ambedkar**: That will, of course be remembered duly by the President when he issues the notification.

***[The amendment of Dr. Ambedkar as shown above was adopted.]***

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